

Materials for  
**PUBLIC INTERNATIONAL LAW (252HS)**

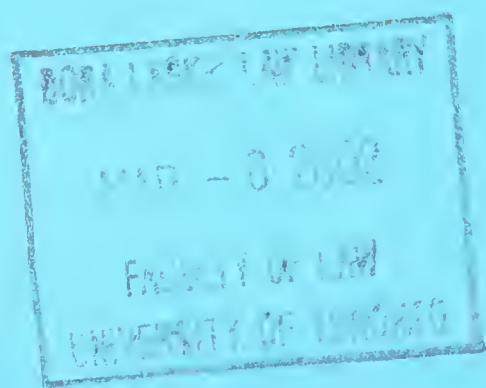
**VOLUME II**

January, 2002

Mr. John Terry  
Mr. Paul Michell  
Adjunct Faculty of Law  
University of Toronto

These Materials are sold at cost and  
are not to be considered as published.  
They are solely for the educational  
use of students at the University of Toronto  
or at other educational institutions  
to whom the Materials  
may also be sold at cost.





Materials for  
**PUBLIC INTERNATIONAL LAW (252HS)**

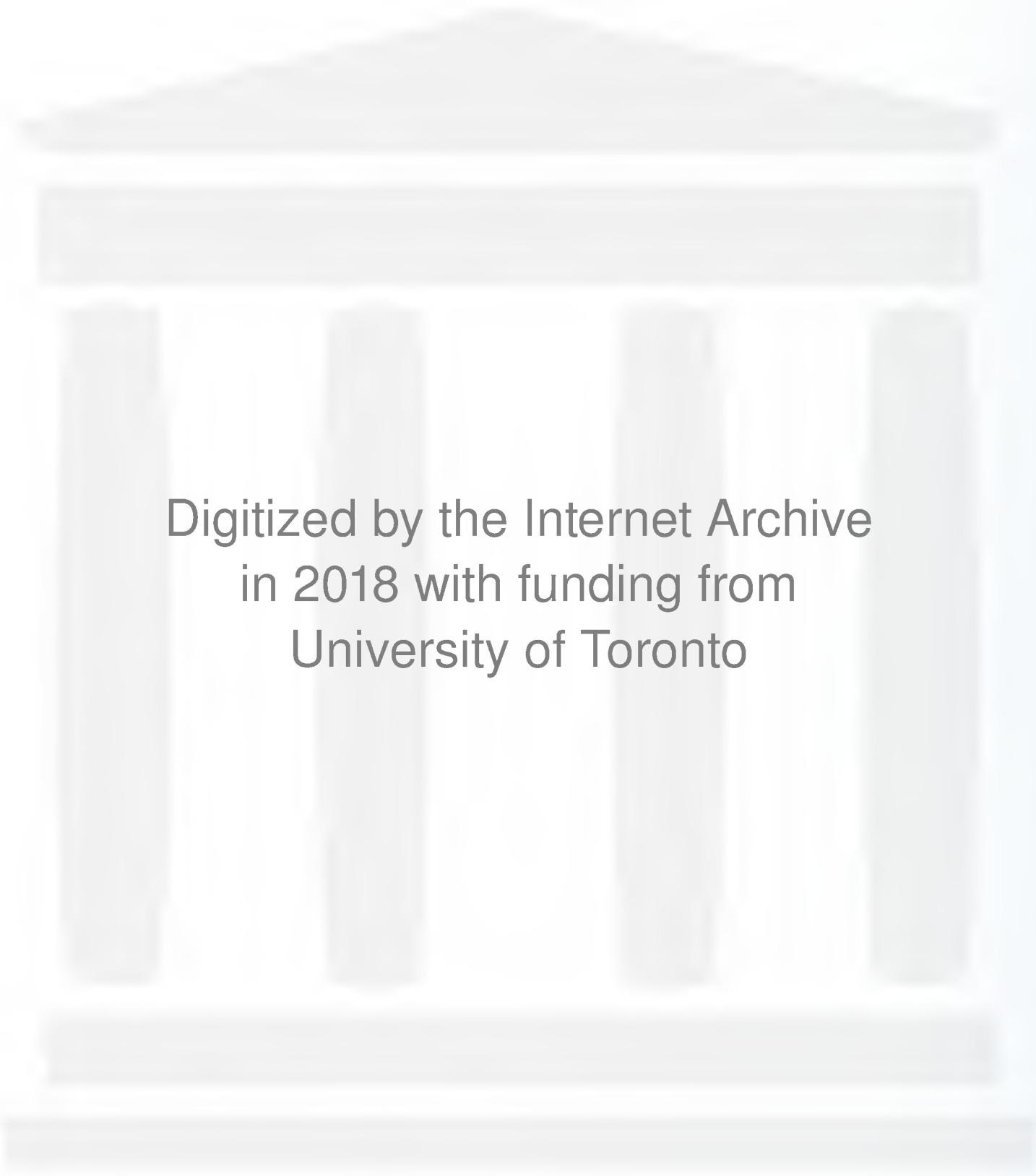
**VOLUME II**

January, 2002

Mr. John Terry  
Mr. Paul Michell  
Adjunct Faculty of Law  
University of Toronto

These Materials are sold at cost and  
are not to be considered as published.

They are solely for the educational  
use of students at the University of Toronto  
or at other educational institutions  
to whom the Materials  
may also be sold at cost.



Digitized by the Internet Archive  
in 2018 with funding from  
University of Toronto

[https://archive.org/details/materialsforpubl02terr\\_2](https://archive.org/details/materialsforpubl02terr_2)

# PUBLIC INTERNATIONAL LAW (252HS)

## MATERIALS, VOLUME 2

### TABLE OF CONTENTS

#### V. THE JURISDICTION OF STATES (CONTINUED)

##### H. Transnational Forcible Abduction

<i>United States v. Toscanino</i> , 500 F.2d 267 (2d Cir. 1974).....	1
<i>United States v. Noriega</i> , 746 F.Supp. 1506 (S.D. Fla. 1990).....	5
<i>United States v. Alvarez-Machain</i> , 112 S.Ct. 2188 (1992).....	14
Mexico's Amicus Curiae Brief in <i>United States v. Alvarez-Machain</i> (1991), 31 I.L.M. 937.....	19
Canada's Amicus Curiae Brief in <i>United States v. Alvarez-Machain</i> (1991), 31 I.L.M. 919.....	24
<i>R. v. Horseferry Road Magistrates' Court, ex p. Bennett</i> , [1994] 1 A.C. 42 (H.L.)...	34
<i>R. v. Walton</i> (1905), 10 C.C.C. 269 (Ont. C.A.).....	42
<i>The Ship North</i> , [1906] S.C.R. 385.....	44
Michell, "English-Speaking Justice: Evolving Responses to Transnational Forcible Abduction After <i>Alvarez-Machain</i> " (1996) 29 Cornell Int'l L.J. 383 at 481-500.....	48

#### VI. ASPECTS OF STATEHOOD

##### 1. Territory

"Acquisition of Territory" in Kindred, <i>supra</i> 399.....	70
<i>Island of Palmas Case</i> (Netherlands v. United States) (1928), 2 R.I.A.A. 829, as excerpted in Kindred, <i>supra</i> at 400.....	70
<i>Legal Status of Eastern Greenland</i> (Denmark v. Norway) (1933), P.C.I.J. Rep.	



(Ser. A/B), No. 53, as excerpted in Kindred, <i>supra</i> , at 405.....	75
<i>Temple of Preah Vihear Case</i> (Cambodia v. Thailand), [1962] I.C.J. Rep. 6, as excerpted in Green, <i>International Law Through the Cases</i> 455 (1970).....	79
<i>Western Sahara Case</i> , [1975] I.C.J. Rep. 12 (Adv. Op.), as excerpted in Henkin et al, <i>International Law, Cases and Materials</i> , (2d ed. 1987) .....	86

## 2. Self-Determination

U.N. General Assembly <i>Declaration on the Granting of Independence to Colonial Territories and Peoples</i> (1960) (and notes), in Harris <i>supra</i> at 114.....	91
<i>Reference Re Secession of Quebec</i> (1998), 161 D.L.R. (4th) 385 at 432-445 (S.C.C.).....	98
<i>Case Concerning East Timor</i> (Portugal v. Australia), [1995] I.C.J. Rep. 90, as excerpted in Kindred, <i>supra</i> at 59.....	112

## 3. Recognition

“Recognition”, in Kindred et al, <i>supra</i> at 248-254.....	113
<i>Tinoco Concessions Arbitration</i> (Great Britain v. Costa Rica) (1923) 1 R.I.A.A. 375, as excerpted in Kindred et al, <i>supra</i> at 258-261.....	120
<i>The Arantzazu Mendi</i> , [1939] A.C. 256 (H.L.).....	123
Knop, “The ‘Righting’ of Recognition: Recognition of States in Eastern Europe and the Soviet Union” [1992] Proc. Conf. Can. Coun. Int’l L. 36-58.....	130
<i>Republic of Somalia v. Woodhouse Drake &amp; Carey Suisse S.A.</i> , [1993] Q.B. 54.....	142

## 4. Case Study I-- The Disintegration of Yugoslavia

European Community, <i>Declaration on the Guidelines on the Recognition of New States in Eastern Europe and in the Soviet Union &amp; Declaration on Yugoslavia</i> (December 16, 1991).....	150
Ragazzi, “Introductory Note” (1992), 31 I.L.M. 1488, 1490.....	151
Pellet, “The Opinions of the Badinter Arbitration Committee: A Second Breath for the Self-Determination of Peoples” (1992) 3 Eur. J. Int’l L. 178.....	152





Badinter Committee Opinion No. 1 (SFRY: dissolution or secession?).....	152
Badinter Committee Opinion No. 8 (is process of dissolution in SFRY complete?).	153
Badinter Committee Opinion No. 9 (how to regulate questions of succession as between states emerging from SFRY?).....	154
Badinter Committee Opinion No. 10 (Entitlement of FRY to be recognized as a new state?).....	155
“UN votes to expel Yugoslavia: Assembly move unprecedented” ( <i>Globe &amp; Mail</i> , September 23, 1992).....	157
Badinter Committee Opinion No. 2 (entitlement of Serbian population in Bosnia to right to self-determination).....	158
Badinter Committee Opinion No. 4 (recognition of Bosnia-Herzegovina?).....	158
Badinter Committee Opinion No. 5 (recognition of Croatia?).....	160
Badinter Committee Opinion No. 6 (recognition of Macedonia?).....	161
Badinter Committee Opinion No. 3 (legal relevance of former internal boundaries).....	164
Ratner, “Drawing a Better Line: <i>Uti Possidetis</i> and the Borders of New States” (1996), 80 A.J.I.L. 590.....	165

## 5. Case Study II -- Rights of Aboriginal Peoples

Brownlie, “The Rights of Peoples in Modern International Law” in Crawford, ed., <i>The Rights of Peoples</i> (1988).....	180
Sanders, “Aboriginal Rights: The Search for Recognition in International Law” in Boldt, Long & Little Bear, eds. <i>The Quest for Justice: Aboriginal Peoples and Aboriginal Rights</i> (1985).....	181
Anaya, “Indigenous Rights Norms in Contemporary International Law” (1991) 8 Ariz. J. Int’l & Comp. L. 1.....	184
<i>Lovelace Case</i> .....	186
<i>Marshall/Mikmaq Tribal Society v. Canada</i> .....	187
<i>Omniyak/Lubicon Lake Band v. Canada</i> .....	190
1993 Draft Declaration on the Rights of Indigenous Peoples (1995), 34 I.L.M.	



541.....	194
Statement by the Government of Canada on Art. 3 of the 1993 Draft Declaration on the Rights of Indigenous Peoples November 1996.....	197
Orkin, “Using the Inuit as Human Flagpoles” ( <i>Globe &amp; Mail</i> , December 4, 1992)...	199

## VII. USE OF FORCE

### 1. Basic Principles

<i>Naulilaa case</i> (Portugal v. Germany) (1928) 2 R.I.A.A. 1011, as excerpted in Friedmann, et al., eds. <i>Cases and Materials on International Law</i> (1969) at 880- 881.....	201
“United Nations Definition of Aggression, 1974” in Kindred, <i>supra</i> at 1117.....	203
Comments by Canadian Delegation on Definition of Aggression and Notes, in Kindred, <i>supra</i> at 1120.....	205
<i>Case Concerning Military and Paramilitary Activities in and against Nicaragua</i> (Nicaragua v. U.S.), [1986] I.C.J. Rep. 14.....	208

### 2. Self-Defence

<i>The Caroline</i> (U.K. v. U.S.) (1837) and notes, in Kindred, <i>supra</i> at 1124.....	235
Schachter, “Self-Defense and the Rule of Law -- The Influence of Community Judgment” (1989) 83 A.J.I.L. 259.....	236
Security Council Debate on Israeli Attack on Iraqi Nuclear Reactor (June 12, 1981), in Kindred, <i>supra</i> at 1128.....	239
Security Council Resolution 487 on the Israeli Attack (1981) and Notes, in Kindred, <i>supra</i> at 1129.....	240
Scott <i>et al.</i> , “A Memorial for Bosnia: Framework of Legal Arguments Concerning the Lawfulness of the Maintenance of the United Nations Security Council’s Arms Embargo on Bosnia and Herzegovina” (1994) 16 Mich. J. Int’l L. 1 at 48-75.....	242

### 3. Collective Measures Through the United Nations

Anglo-French Invasion of Suez: Debate in the House of Lords (1956).....	270
U.N. General Assembly “Uniting for Peace” Resolution (1950) and Note on Peace- Keeping Forces.....	272
“Security Council Action under Chapter VII: Powers” (including a discussion of the Korean Question and the Invasion of Kuwait) in Harris, <i>supra</i> at 949.....	274



#### 4. Case Study—September 11, 2001 and After

Security Council Resolution 1368 (September 12, 2001).....	289
Security Council Resolution 1373 (September 28, 2001).....	290
Security Council Resolution 1390 (January 16, 2002).....	294
Mandel, “Say what you want, but this war is illegal” ( <i>Globe &amp; Mail</i> , October 19, 2001).....	297
Brunée, “Legality, Legitimacy, Proportionality and Self-Defence” ( <i>Ultra Vires</i> , October 2001).....	299
Reisman, “In Defense of World Public Order” (2001) 95 A.J.I.L. 833.....	302
Charney, “The use of Force Against Terrorism and International Law” (2001) 95 A.J.I.L. 835.....	303
Franck, “Terrorism and the Right of Self-Defense” (2001) 95 A.J.I.L. 839.....	305

#### 5. Humanitarian Intervention

Alberts, “The United States Invasion of Panama” (1991) 1 Transnat’l. L. & Contemp. Probs. 261.....	308
Letter from United States to UN Security Council Respecting Panama Invasion (December 20, 1989).....	311
Canadian Government Response to Panama Invasion (December 20, 1989).....	312
UN General Assembly Resolution on Panama Invasion.....	313
Alberts, “The United States Invasion of Panama”, <i>supra</i> .....	314
Gordon, “Humanitarian Intervention by the United Nations: Iraq, Somalia and Haiti”.....	316
UN Security Council Resolution 688 (1991) Concerning the Iraqi Civilian Population.....	320
UN Security Council Resolution 940 “The U.N. Resolution Clearing the Way for an Invasion of Haiti”.....	322
European Union Conclusions on Kosovo, April 8, 1999.....	323
Text of Broadcast by British Prime Minister Tony Blair, March 26, 1999.....	327
Decision on Review of Indictment of Slobodan Milosevic (May 24, 1999).....	329
Ruling of the Federal Constitutional Court of Yugoslavia on the NATO Assault on	



Yugoslavia (April 18, 1999).....	338
International Court of Justice, Press Release Respecting Jurisdictional Ruling on Legality of Use of force in Yugoslavia (June 2, 1999).....	342
Brownlie, “Thoughts on Kind-Hearted Gunmen” in Lillich, ed., <i>Humanitarian Intervention and the United Nations</i> (1973) at 139.....	344
Carothers, “Empirical Perspectives on the Emerging Norm of Democracy in International Law” (1992) 86 Proc. A.S.I.L. 261.....	346

## 6. Nuclear Weapons

<i>Legality of the Threat or Use of Nuclear Weapons Case</i> , [1997] I.C.J. (Adv. Op.) as excerpted in Harris, <i>supra</i> at 924.....	347
---	-----

